

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

FRANCISCO SAN MARTIN AND BRENDA GARCIA §

Plaintiff, §

vs. §

UNITED STATES OF AMERICA §

Defendants. §

Civil Action _____

PLAINTIFFS' COMPLAINT

COMPLAINT

NOW COMES **FRANCISCO SAN MARTIN AND BRENDA GARCIA**, Plaintiffs herein, complaining of the **UNITED STATES MARSHALL SERVICE**, Defendant herein, and would show the Court as follows:

PARTIES

1. Plaintiffs, **FRANCISCO SAN MARTIN AND BRENDA GARCIA** are residents of Pharr, Hidalgo County, Texas.

2. Defendant, **UNITED STATES OF AMERICA**, may be served with process in accordance with Rule 4(i)(1)(A) of the Federal Rules of Civil Procedure by serving a copy of the Summons and Plaintiffs' Complaint by certified mail, return receipt requested:

(1) United States Attorney for the Southern District of Texas, 1701 W. Highway 83, #600, McAllen, Texas 78501-5162, at the United States Attorney's Office, Southern District of

Texas, at the United States Attorney's mailing address, U.S. District Clerk's Office 1701 US – 83 BUS #1011, McAllen, Texas 78501, to the attention of the Civil Process Clerk.

(2) Office of the Attorney General, U.S. Department of Justice, 10th & Constitutional Avenue, NW, Washington, DC 20530-0001, to the attention of the Civil Process Clerk;

(3) Office of General Counsel, CG-3, 15th floor, United States Marshals Service, Landover Operations Center, 3601 Pennsy Dr., Landover, MD 20785, attention Janice Tate.

JURISDICTION AND VENUE

3. This lawsuit is in action arising out of bodily injuries caused by an employee of the United States Marshals Office. This federal District Court has jurisdiction pursuant to and in compliance with 28 U.S.C. §§1346(b) and 2679(b) (1).

4. Venue: The acts and omissions complained of in the lawsuit occurred in the judicial district in which this Court sits, and venue is proper in the Southern District of Texas under 28 U.S.C. §1402(b).

5. Pursuant to 28 U.S.C. § 2672 and §2675(a), the Plaintiffs plead that the claims set forth herein were filed with and presented administratively to the United States Marshals Service by Standard Form 95. Accordingly, the Plaintiffs have complied with all jurisdictional prerequisites and conditions precedent to commencement and prosecution of this litigation.

CAUSE OF ACTION

6. Plaintiffs **FRANCISCO SAN MARTIN AND BRENTA GARCIA** would show the Court that on or about April 25, 2020, he was driving 2007 Silverado Chevrolet and was traveling northbound on the 8200 block of S. McColl Rd. in McAllen, Texas. BRENTA GARCIA was a

passenger in the vehicle with Plaintiff, FRANCISCO SAN MARTIN. A United States vehicle, operated by Enrique Lopez, was also traveling northbound on the inside lane in front the Plaintiff's vehicle. As Enrique Lopez merged onto the outside lane, he failed to control the speed of his vehicle and caused collision with Plaintiff's vehicle. On said date, Enrique Lopez struck Plaintiff's vehicle on the left front quarter panel. Enrique Lopez failed to keep an assured clear distance between his vehicle and the Plaintiff's vehicle while changing lanes when unsafe which contributed to the collision. At the time of the collision, Enrique Lopez was in the course and scope of his duties for the UNITED STATES OF AMERICA, Specifically United States Marshals Service. In causing the collision of the vehicles involved, Enrique Lopez was guilty of various acts or omissions which constitute negligence as enumerated below, each of which constitutes a proximate cause of Plaintiffs' injuries and damages, to wit:

- a. In failing to keep a proper lookout for other traffic as a reasonable and prudent person would have done under the same or similar circumstances;
- b. In failing to make a timely application of his brakes;
- c. In failing to take proper evasive action in order to avoid the collision;
- d. In failing to maintain proper control of his vehicle; and
- e. In failing to keep an assured clear distance between his vehicle and the Plaintiffs' vehicle, in violation of Texas Transportation Code §545.062.

FEDERAL TORT CLAIMS ACT

7. This case is commenced and prosecuted against the United States of America pursuant to and in compliance with 28 U.S.C §2671-2680, commonly referred to as the "Federal Tort Claims

Act.” Under the Federal Tort Claims Act, including 28 U.S.C. §§2674 and 1346(b), and under the laws of the State of Texas, the Defendant UNITED STATES OF AMERICA would be liable to the Plaintiffs for their personal injuries and loss of property caused through the negligent or wrongful act(s) or omission(s) of its employee, Enrique Lopez, committed while acting within the scope of his office or employment with the Defendant.

DAMAGES

8. Plaintiffs **FRANCISCO SAN MARTIN**, would show that as a proximate cause of the aforesaid negligence of the above-named Defendant, he sustained injuries his Cervical Spine and Lumbar Spine, and he has suffered physical pain and mental anguish in the past and in all reasonable probabilities will continue to so suffer in the future; he has suffered physical impairment in the past and in all reasonable probabilities will continue to so suffer in the future; she has suffered impairment to earning capacity in the past and in all reasonable probability continue to suffer a loss of wage earning capacity in the future.

9. Plaintiff **FRANCISCO SAN MARTIN** would show that as a result of the accident, he sustained bodily injuries to his Cervical Spine and Lumbar Spine. As a result of such trauma, **FRANCISCO SAN MARTIN** has suffered physical pain and mental anguish and in reasonable probability will continue to so suffer in the future; and in reasonable probability, he will suffer a loss of wage-earning capacity in the future. Plaintiff would further show that because of the conduct of the above-named Defendant, he sustained property damages to his 2007 Silverado Chevrolet in the total amount of Four Thousand One Hundred and Forty-One Dollars with Sixty-Five Cents (\$4,141.65). Plaintiff **FRANCISCO SAN MARTIN** has incurred reasonable and necessary medical expenses for his proper treatment and in reasonable probability will incur additional medical expenses in the future. All the aforementioned damages of **FRANCISCO SAN**

MARTIN for his proper treatment are in a total amount of Twenty-Six Thousand One Hundred and Fifteen Dollars and No Cents (\$26,115.00) for which he sues.

10. Plaintiff, BRENTA SANTOS has sustained bodily injuries to her Cervical Spine and Lumbar Spine. As a result of such trauma, BRENTA SANTOS has suffered physical pain and mental anguish and in reasonable probability will continue to so suffer in the future however as a result of such trauma, BRENTA SANTOS, has suffered physical pain and mental anguish and in reasonable probability will continue to so suffer in the future. All the damages for her proper treatment, are in a total amount of Twenty-Five Thousand and Eighty Dollars and No Cents (\$25,080.00) for which she sues.

11. Plaintiffs further allege that they are entitled to recover prejudgment and postjudgment interest as provided by law.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Defendant be served with citation and required to appear and answer this petition, that upon final hearing hereof, Plaintiffs have judgment against the Defendant, for Plaintiffs' damages as alleged herein, for costs of court and for such other and further relief, both general and special, at law and in equity, to which the Plaintiffs may be justly entitled.

Respectfully submitted,

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